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IN THE

Supreme Court of the United States

October Term 1973

No. 73-1538

ROBERT V. RAFTER,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above tax proceeding 14 January 1974 (A 1, 2).

Opinion Below

No opinion was rendered by the Court of Appeals for the Second Circuit, and the opinion of the United States Tax Court (the Honorable C. MOXLEY FEATHERSTON) is officially reported at 60 T.C. No. 1. The decisions of the Tax Court are appended to this petition (A 3, 4).

Jurisdiction

Jurisdiction is invoked pursuant to Section 1254 of Title 28 of the United States Code.

Questions Presented

The basic question to be reviewed is whether the proceedings before the United States Tax Court were in violation of the Fifth Amendment in failing to provide a fair trial and in depriving petitioner of property without due process of law.[1]

Fairly comprised therein would seem to be some or all of the issues present in petitioner's mandamus application before this Court during the October Term 1970.[2]

Constitutional and Statutory Provisions Involved

The constitutional and statutory provisions which are relevant to decision of this case, and the pertinent text of which is appended hereto, are the Fifth Amendment of the Constitution of the United States and Section 7459 of Title 26 of the United States Code (A 10).

Statement

This application involves a tax proceeding[3] tried before the United States Tax Court, the Honorable AUSTIN HOYT presiding, at New York City on December 4 and 5, 1968.

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[1] *In Re*: Murchison, 349 U.S. 133, 138, 75 S.Ct. 623, 625, 99 L. ed. 942 (1954); Murphy v. Waterfront Commission, 378 U.S. 52, 55 (1964).

[2] No. 1274, October Term 1970, in the Supreme Court of the United States.

[3] Petitioner filed petitions for redetermination of tax deficiencies 25 April 1967 and 19 August 1968, consolidated docket Nos. 2044-67 and 3976-68.

In January of 1973 the proceeding was reassigned to the Honorable C. MOXLEY FEATHERSTON (A 3, 4), and decisions were entered 25 May 1973 (A 3, 4).[4] Thereafter, petitioner appealed, and by judgment entered 14 January 1974 the Court of Appeals affirmed the Tax Court (A 1).[5]

Reasons for Granting the Writ

The judgment below should be reviewed because the Court of Appeals has sanctioned a departure from the accepted and usual course of judicial proceedings. The Internal Revenue Code at Section 7459 (a) provides that a report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable, and this is set forth as a "Requirement" (A 10):

It would seem that, if the words "as quickly as practicable" and "Requirement" have any meaning at all, then a retrial should be granted. To say that a decision rendered four and one half years after trial meets with the requirement of the Code or the Fifth Amendment is to further aggrandize the executive department and abrogate judicial principle and congressional enactment.

Petitioner respectfully requests a retrial and, upon the retrial, an assurance from the Tax Court that the issue of credibility of the witnesses will be decided by the court presiding at the trial.

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[4] Petitioner's motion for retrial was denied 4 May 1973 (A5).

[5] The docket No. before the Court of Appeals for the Second Circuit is 73-2348.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT V. RAFTER,
Attorney for Petitioner.

APPENDIX

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of January one thousand nine hundred and seventy-four.

Present: Hon. Leonard P. Moore,
Hon. Henry J. Friendly,
Hon. Robert P. Anderson,
Circuit Judges.

ROBERT V. RAFTER,
Petitioner-Appellant,

v

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

73-2348.

Appeal from The Tax Court of the United States

This cause came on to be heard on the transcript of record from The Tax Court of the United States , and was argued by counsel.

Judgment of the Court of Appeals

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk,

By: VINCENT A. CARLIN,
Chief Deputy Clerk.

United States Court of Appeals
Second Circuit
Filed, January 14, 1974
A. DANIEL FUSARO, Clerk

UNITED STATES TAX COURT

WASHINGTON

ROBERT V. RAFTER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 2044-67.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed April 2, 1973, it is

ORDERED AND DECIDED: There are deficiencies in petitioner's income tax for the taxable years 1963, 1964, and 1965 in the amounts of $350.10, $298.37, and $721.40, respectively.

Enter:

C. MOXLEY FEATHERSTON,
Judge.

Entered: May 25, 1973.

(Signed) C. Moxley Featherston.

UNITED STATES TAX COURT

ROBERT V. RAFTER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 3976-68.

DECISION

Pursuant to the opinion of the Court filed April 2, 1973, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1966 in the amount of $1,057.43.

(Signed) C. MOXLEY FEATHERSTON,
Judge.

Entered: May 25 1973.

Motion for Retrial, Dated May 1, 1973

May 1, 1973

UNITED STATES TAX COURT

ROBERT V. RAFTER,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 2044-67 and 3976-68.

MOTION FOR RETRIAL, FURTHER TRIAL AND RECONSIDERATION PURSUANT TO RULE 19(e)

Petitioner respectfully moves for retrial, further trial and reconsideration pursuant to Rule 19(e) of the Rules of the United States Tax Court.

The basis for this motion is as follows:

(1) This proceeding before the executive department has not provided a fair trial and is contrary to the fifth amendment. The three previous motions for further trial together with the motion for leave to depose were denied without opinion. The matter was tried during the first week of December, 1968, and decided by a different court almost five years later.

(2) The opinion fails to consider *Lynch, Fuentes, Sniadach* or *Tucker* all holding prejudgment garnishment, attachment and bank repossession to be unconstitutional,[1] with specific application to the Connecticut design.

According to the supreme law of the land, then, both Spiegelman actions were illegal, and both actions by petitioner against Newark and Blackmon were valid. It would seem proper to seek to defend against illegal procedures involving the appropriation and repeated appropriation of income producing property belonging to plaintiff and to seek damages for the interference with those property rights. And ordinary and necessary expense incurred would seem to be deductible.

(3) The opinion fails to consider *Lynch v. Household Finance Corp.*, decided January 12, 1973, U.S.D.C. Connecticut, holding 52-329 of the General Statutes of the State of Connecticut unconstitutional. So it would seem that the crusade or vendetta set forth in the court's opinion was successful and the desired result obtained, though petitioner would never term endeavors to support the constitution and to preserve it a "crusade or vendetta".

(4) Understandably there is no mention of petitioner's property rights in the earlier antitrust suit and in the tax plan mentioned in that suit involving tax free operation of vessels in foreign commerce. It would seem that expense related to the preservation of those rights should be allowed. It would seem further that all of that related litigation did result in the freezing of evidence and testimony

[1] *Lynch v. Household Finance Corp.*, 405 U.S. 538; *Fuentes v. Shevin*, 407 U.S. 67; *Sniadach v. Family Finance Corp.*, 395 U.S. 337; *Tucker v. Maher*, 405 U.S. 1052.

concerning alleged restraint of foreign commerce and alleged insurance boycott.[2]

(5) Your petitioner respectfully calls to the court's attention certain assumptions of fact and conclusions of law that seem to be mistaken but too numerous to set forth in these motion papers.[3] Also, the 1966 return sets forth the evidence of the alleged theft in the form of the Blackmon deposition, an exhibit at the trial referred to by the court at that time. The deposition is not in Washington. Again, on the issue of theft, one form of larceny is a taking in connection with a trespass (New York statute), so also the failure to return the attached property upon withdrawal of the lawsuit, and the reattachment with the knowledge that the bank would claim the property in a few days, while the same bank withheld petitioner's funds for payment of

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[2] Perhaps had friendly relations with Middle East oil been established through the democratic method of private enterprise, rather than executive decree, there would be no energy or trade deficit, and perhaps, too, there would be a sound dollar.

[3] For instance at page 16 the court speaks of litigation which is ordinary and necessary.

Top of page 9, no petition for a writ was denied. Appeal Printing filed the petition two days late.

Second paragraph page 7, how can employment be terminated in August for something done in November, see last paragraph of page 6.

Also, under New York decisions, counterclaims must be made by one in the same capacity as sued, see evidence and certified copies of checks in court's possession, see conclusions at page 6 of the court's opinion, first paragraph.

At page 13 automobile expense is incurred and paid. At page 15 the court's expenses and allowance excludes travel expense, yet it would seem to be ordinary and necessary.

At page 27, first paragraph, Section 446(e) is cited on the issue of permission to change accounting methods. No mention is made of waiver or permission set forth in 1963 tax form, c59-16-77888a-1 at Schedule C instructions.

the debt under an illegal prejudgment garnishment. It would seem that a jury could find a wrongful design to appropriate the property, could find intent, bearing in mind that the bank's taking also violated the constitution under the cases cited earlier.

(6) At page 19, footnote 6, and at page 26, the court states petitioner filed his returns prior to 1963 on a cash basis. Is there evidence in the record of these returns. It is more likely that 1963 was the exception proceeding from an error on the part of petitioner. Further testimony and evidence would seem to be required for this conclusion twice stated by the court.

WHEREFORE, petitioner respectfully requests a fair trial pursuant to the fifth amendment entailing reconsideration, retrial and further trial under Rule 19(e) of the Rules of the United States Tax Court.

Respectfully submitted,

ROBERT V. RAFTER.

Notice of Reassignment

UNITED STATES TAX COURT
Washington

ROBERT V. RAFTER,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket Nos. 2044-67 and 3976-68.

Judge Austin Hoyt, to whom this proceeding was formerly assigned, has been ill for several months, and it is not anticipated that he will be able to return to his chambers for several more months. This will serve as notice to the parties that this proceeding will be reassigned to another Judge on the Court for final disposition.

It is not anticipated that any rehearing or reargument will be necessary in connection with this proceeding, since the entire file and record herein will be transferred to the Judge to whom the case is assigned. However, should any motions be contemplated in connection with this proceeding, they should be addressed to Chief Judge Drennen and filed immediately. If no such motions are received within 15 days, this proceeding will be assigned to another Judge who will proceed with the disposition thereof.

W. M. DRENNEN.
(Signed) W. M. DRENNEN,
(SEAL) *Chief Judge.*

Dated: Washington, D. C.,
December 12, 1972.

Fifth Amendment to the Constitution of the United States
Internal Revenue Code, 26 U.S.C. 7459(a)

Fifth Amendment to the Constitution of the United States

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendments to the Constitution

ARTICLE THE FIFTH

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Internal Revenue Code, 26 U. S. C. 7459(a)

Statutory Provisions
Title 26 of the United States Code
Section 7459. Reports and Decisions
(a) Requirement.—etc.

§ 7459. REPORTS AND DECISIONS

(a) REQUIREMENT.—A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.